

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TYRONE LOWE

Petitioner-Defendant,

v.

**Case No. 15-C-0963
(Criminal Case No. 11-CR-74)**

UNITED STATES OF AMERICA

Respondent-Plaintiff.

ORDER

Pursuant to 28 U.S.C. § 2255, the parties jointly move to vacate petitioner Tyrone Lowe's 15 year sentence under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). Petitioner's sentence was based on three prior "violent felony" convictions – armed robbery, battery by a prisoner, and fleeing/eluding. The fleeing conviction qualified as a violent felony under the ACCA's "residual clause." See United States v. Dismuke, 593 F.3d 582 (7th Cir. 2010).

In Johnson v. United States, 135 S. Ct. 2551 (2015), the Supreme Court struck down the residual clause as unconstitutionally vague. In Price v. United States, No. 15-2427, 2015 WL 4621024 (7th Cir. Aug. 4, 2015), the Seventh Circuit held that Johnson announced a new substantive rule which applied retroactively to cases on collateral review. The Seventh Circuit then granted petitioner authorization to file a successive § 2255 motion raising a Johnson claim.

In their joint § 2255 motion, the parties agree that petitioner no longer qualifies as an armed career criminal. With the ACCA inapplicable, petitioner's current sentence of 180

months is “in excess of the maximum authorized by law.” 28 U.S.C. § 2255(a).

THEREFORE, IT IS ORDERED that the joint motion (R. 8) is **GRANTED**, and petitioner’s sentence is **VACATED**.

IT IS FURTHER ORDERED that this matter is scheduled for **RE-SENTENCING** on **Tuesday, November 24, 2015, at 1:30 p.m.**

IT IS FURTHER ORDERED that on or before **October 23, 2015**, the probation office file an update to the PSR recalculating the sentencing guidelines without the ACCA designation. The report shall also include proposed conditions of supervised release, see United States v. Thompson, 777 F.3d 368 (7th Cir. 2015), and a statement of petitioner’s conduct and performance in prison.

FINALLY, IT IS ORDERED that the parties file any sentencing motions, memoranda, or other supporting materials on or before **November 17, 2015**.

Dated at Milwaukee, Wisconsin, this 23rd day of September, 2015.

/s Lynn Adelman
LYNN ADELMAN
District Judge